

AN ACT

ENTITLED, An Act to revise the seller's property condition disclosure statement.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 43-4-44 be amended to read as follows:

43-4-44. The following form shall be used for the property condition disclosure statement:

SELLER'S PROPERTY CONDITION DISCLOSURE STATEMENT

(This disclosure shall be completed by the seller. This is a disclosure required by law. If you do not understand this form, seek legal advice.)

Seller \_\_\_\_\_

Property Address \_\_\_\_\_

\_\_\_\_\_

This Disclosure Statement concerns the real property identified above situated in the City of \_\_\_\_\_ County of \_\_\_\_\_, State of South Dakota.

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH § 43-4-38. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR ANY AGENT REPRESENTING ANY PARTY IN THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PARTIES MAY WISH TO OBTAIN. Seller hereby authorizes any agent representing any party in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

IF ANY MATERIAL FACT CHANGES BEFORE CONVEYANCE OF TITLE TO THIS PROPERTY, THE SELLER MUST DISCLOSE SUCH MATERIAL FACT WITH A WRITTEN AMENDMENT TO THIS DISCLOSURE STATEMENT.

I. LOT OR TITLE INFORMATION

1. When did you purchase or build the home? \_\_\_\_\_

If the answer is yes to any of the following, please explain under additional comments or on an attached separate sheet.

2. Were there any title problems when you purchased the property?

Yes \_\_\_\_ No \_\_\_\_

3. Are there any recorded liens or financial instruments against the property, other than a first mortgage?

Yes \_\_\_\_ No \_\_\_\_

4. Are there any unrecorded liens or financial instruments against the property, other than a first mortgage?

Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

5. Are there any easements which have been granted in connection with the property (other than normal utility easements for public water and sewer, gas and electric service, telephone service, cable television service, drainage, and sidewalks)?

Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

6. Are there any problems related to establishing the lot lines/boundaries?

Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

7. Do you have a location survey in your possession or a copy of the recorded plat? If yes, attach a copy.

Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

8. Are you aware of any encroachments or shared features, from or on adjoining property (i.e. fences, driveway, sheds, outbuildings, or other improvements)?

Yes \_\_\_\_ No \_\_\_\_

9. Are you aware of any covenants or restrictions affecting the use of the property in accordance with

local law? If yes, attach a copy of the covenants and restrictions.

Yes \_\_\_\_ No \_\_\_\_

10. Are you aware of any current or pending litigation, foreclosure, zoning, building code or restrictive covenant violation notices, mechanic's liens, judgments, special assessments, zoning changes, or changes that could affect your property?

Yes \_\_\_\_ No \_\_\_\_

11. Is the property currently occupied by the owner?

Yes \_\_\_\_ No \_\_\_\_

12. Does the property currently receive the owner occupied tax reduction pursuant to SDCL 32-3-1?

Yes \_\_\_\_ No \_\_\_\_

13. Is the property currently part of a property tax freeze for any reason?

Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

14. Is the property leased?

Yes \_\_\_\_ No \_\_\_\_

15. If leased, does the property use comply with local zoning laws?

Yes \_\_\_\_ No \_\_\_\_

16. Does this property or any portion of this property receive rent? If yes, how much \$\_\_\_\_ and how often \_\_\_\_?

Yes \_\_\_\_ No \_\_\_\_

17. Do you pay any mandatory fees or special assessments to a homeowners' or condominium association?

Yes \_\_\_\_ No \_\_\_\_

If yes, what are the fees or assessments? \$ \_\_\_\_ per \_\_\_\_ (i.e. annually, semi-annually, monthly)

Payable to whom: \_\_\_\_\_

For what purpose? \_\_\_\_\_

18. Are you aware if the property has ever had standing water in either the front, rear, or side yard more than forty-eight hours after heavy rain?

Yes \_\_\_\_ No \_\_\_\_

19. Is the property located in or near a flood plain?

Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

20. Are wetlands located upon any part of the property?

Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

## II. STRUCTURAL INFORMATION

If the answer is yes to any of the following, please explain under additional comments or on an attached separate sheet.

1. Are you aware of any water penetration problems in the walls, windows, doors, basement, or crawl space?

Yes \_\_\_\_ No \_\_\_\_

2. What water damage related repairs, if any, have been made?

If any, when? \_\_\_\_\_

3. Are you aware if drain tile is installed on the property?

Yes \_\_\_\_ No \_\_\_\_

4. Are you aware of any interior cracked walls or floors, or cracks or defects in exterior driveways, sidewalks, patios, or other hard surface areas?

Yes \_\_\_\_ No \_\_\_\_

What related repairs, if any, have been made?

\_\_\_\_\_

5. Are you aware of any roof leakage, past or present?

Yes \_\_\_\_ No \_\_\_\_

Type of roof covering: \_\_\_\_\_

Age: \_\_\_\_\_

What roof repairs, if any, have been made, when and by whom?

\_\_\_\_\_

Describe any existing unrepaired damage to the roof: \_\_\_\_\_

6. Are you aware of insulation in:

the ceiling/attic? Yes \_\_\_\_ No \_\_\_\_

the walls? Yes \_\_\_\_ No \_\_\_\_

the floors? Yes \_\_\_\_ No \_\_\_\_

7. Are you aware of any pest infestation or damage, either past or present?

Yes \_\_\_\_ No \_\_\_\_

8. Are you aware of the property having been treated for any pest infestation or damage?

Yes \_\_\_\_ No \_\_\_\_

If yes, who treated it and when? \_\_\_\_\_

9. Are you aware of any work upon the property which required a building, plumbing, electrical, or any other permit?

Yes \_\_\_\_ No \_\_\_\_

If yes, describe the work: \_\_\_\_\_

Was a permit obtained? Yes \_\_\_\_ No \_\_\_\_

Was the work approved by an inspector? Yes \_\_\_\_ No \_\_\_\_

10. Are you aware of any past or present damage to the property (i.e. fire, smoke, wind, floods, hail, or snow)?

Yes \_\_\_\_ No \_\_\_\_

If yes, describe \_\_\_\_\_

Have any insurance claims been made?

Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

Was an insurance payment received?

Yes \_\_\_\_ No \_\_\_\_ Unknown \_\_\_\_

Has the damage been repaired?

Yes \_\_\_\_ No \_\_\_\_

If yes, describe in detail: \_\_\_\_\_

11. Are you aware of any problems with sewer blockage or backup, past or present?

Yes \_\_\_\_ No \_\_\_\_

### III. SYSTEMS/UTILITIES INFORMATION

|                                      | NONE/NOT<br>INCLUDED | WORKING | NOT<br>WORKING |
|--------------------------------------|----------------------|---------|----------------|
| 1. 220 Volt Service                  | _____                | _____   | _____          |
| 2. Air Exchanger                     | _____                | _____   | _____          |
| 3. Air Purifier                      | _____                | _____   | _____          |
| 4. Attic Fan                         | _____                | _____   | _____          |
| 5. Burglar Alarm and Security System | _____                | _____   | _____          |
| 6. Ceiling Fan                       | _____                | _____   | _____          |
| 7. Central Air - Electric            | _____                | _____   | _____          |
| 8. Central Air - Water Cooled        | _____                | _____   | _____          |
| 9. Cistern                           | _____                | _____   | _____          |
| 10. Dishwasher                       | _____                | _____   | _____          |
| 11. Disposal                         | _____                | _____   | _____          |
| 12. Doorbell                         | _____                | _____   | _____          |

|                                      |       |       |       |
|--------------------------------------|-------|-------|-------|
| 13. Fireplace                        | _____ | _____ | _____ |
| 14. Fireplace Insert                 | _____ | _____ | _____ |
| 15. Garage Door/Opener Control(s)    | _____ | _____ | _____ |
| 16. Garage Wiring                    | _____ | _____ | _____ |
| 17. Heating System                   | _____ | _____ | _____ |
| 18. Hot Tub, Whirlpool, and Controls | _____ | _____ | _____ |
| 19. Humidifier                       | _____ | _____ | _____ |
| 20. Intercom                         | _____ | _____ | _____ |
| 21. Light Fixtures                   | _____ | _____ | _____ |
| 22. Microwave/Hood                   | _____ | _____ | _____ |
| 23. Plumbing and Fixtures            | _____ | _____ | _____ |
| 24. Pool and Equipment               | _____ | _____ | _____ |
| 25. Propane Tank                     | _____ | _____ | _____ |
| 26. Radon System                     | _____ | _____ | _____ |
| 27. Sauna                            | _____ | _____ | _____ |
| 28. Septic/Leaching Field            | _____ | _____ | _____ |
| 29. Sewer Systems/Drains             | _____ | _____ | _____ |
| 30. Smoke/Fire Alarm                 | _____ | _____ | _____ |
| 31. Solar House - Heating            | _____ | _____ | _____ |
| 32. Sump Pump(s)                     | _____ | _____ | _____ |
| 33. Switches and Outlets             | _____ | _____ | _____ |
| 34. Underground Sprinkler and Heads  | _____ | _____ | _____ |
| 35. Vent Fan                         | _____ | _____ | _____ |
| 36. Water Heater - Electric or Gas   | _____ | _____ | _____ |
| 37. Water Purifier                   | _____ | _____ | _____ |
| 38. Water Softener - Leased or Owned | _____ | _____ | _____ |
| 39. Well and Pump                    | _____ | _____ | _____ |
| 40. Wood Burning Stove               | _____ | _____ | _____ |

#### IV. HAZARDOUS CONDITIONS

Are you aware of any existing hazardous conditions of the property and are you aware of any tests having been performed?

|  | EXISTING CONDITIONS |       | TESTS PERFORMED |       |
|--|---------------------|-------|-----------------|-------|
|  | YES                 | NO    | YES             | NO    |
| 1. Methane Gas                         | _____               | _____ | _____           | _____ |
| 2. Lead Paint                          | _____               | _____ | _____           | _____ |
| 3. Radon Gas (House)                   | _____               | _____ | _____           | _____ |
| 4. Radon Gas (Well)                    | _____               | _____ | _____           | _____ |
| 5. Radioactive Materials               | _____               | _____ | _____           | _____ |
| 6. Landfill, Mineshaft                 | _____               | _____ | _____           | _____ |
| 7. Expansive Soil                      | _____               | _____ | _____           | _____ |
| 8. Mold                                | _____               | _____ | _____           | _____ |
| 9. Toxic Materials                     | _____               | _____ | _____           | _____ |
| 10. Urea Formaldehyde Foam Insulations | _____               | _____ | _____           | _____ |
| 11. Asbestos Insulation                | _____               | _____ | _____           | _____ |
| 12. Buried Fuel Tanks                  | _____               | _____ | _____           | _____ |
| 13. Chemical Storage Tanks             | _____               | _____ | _____           | _____ |
| 14. Fire Retardant Treated Plywood     | _____               | _____ | _____           | _____ |
| 15. Production of Methamphetamines     | _____               | _____ | _____           | _____ |

If the answer is yes to any of the questions above, please explain in additional comments or on an attached separate sheet.

#### V. MISCELLANEOUS INFORMATION

1. Is the street or road located at the end of the driveway to the property public or private?

Public \_\_\_\_\_ Private \_\_\_\_\_

2. Is there a written road maintenance agreement?

If yes, attach a copy of the maintenance agreement.

Yes \_\_\_\_\_ No \_\_\_\_\_



3. When was the fireplace/wood stove/chimney flue last cleaned? \_\_\_\_\_

4. Within the previous twelve months prior to signing this document, are you aware of any of the following occurring on the subject property?

a. A human death by homicide or suicide? If yes, explain:

\_\_\_\_\_

Yes \_\_\_\_ No \_\_\_\_

b. Other felony committed against the property or a person on the property? If yes, explain:

\_\_\_\_\_

Yes \_\_\_\_ No \_\_\_\_

5. Is the water source public or private (select one)?

6. If private, what is the date and result of the last water test?

\_\_\_\_\_

7. Is the sewer system public \_\_\_\_ or private \_\_\_\_ (select one)?

8. If private, what is the date of the last time the septic tank was pumped? \_\_\_\_\_

9. Are there broken window panes or seals?

Yes \_\_\_\_ No \_\_\_\_

If yes, specify: \_\_\_\_\_

10. Are there any items attached to the property that will not be left, such as: towel bars, mirrors, swag lamps and hooks, curtain rods, window coverings, light fixtures, clothes lines, swing sets, storage sheds, ceiling fans, basketball hoops, mail boxes, etc.

Yes \_\_\_\_ No \_\_\_\_

If yes, please list \_\_\_\_\_

11. Are you aware of any other material facts or problems that have not been disclosed on this form?

Yes \_\_\_\_ No \_\_\_\_

If yes, explain: \_\_\_\_\_

VI. ADDITIONAL COMMENTS (ATTACH ADDITIONAL PAGES IF NECESSARY)

\_\_\_\_\_  
\_\_\_\_\_

CLOSING SECTION

The Seller hereby certifies that the information contained herein is true and correct to the best of the Seller's information, knowledge, and belief as of the date of the Seller's signature below. If any of these conditions change before conveyance of title to this property, the change will be disclosed in a written amendment to this disclosure statement.

SELLER \_\_\_\_\_ DATE \_\_\_\_\_

SELLER \_\_\_\_\_ DATE \_\_\_\_\_

THE SELLER AND THE BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO OBTAIN A TRUE REPORT AS TO THE CONDITION OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN ANY CONTRACT OF SALE AS NEGOTIATED BETWEEN THE SELLER AND THE BUYER WITH RESPECT TO SUCH PROFESSIONAL ADVICE AND INSPECTIONS.

I/We acknowledge receipt of a copy of this statement on the date appearing beside my/our signature(s) below. Any agent representing any party to this transaction makes no representations and is not responsible for any conditions existing in the property.

BUYER \_\_\_\_\_ DATE \_\_\_\_\_

BUYER \_\_\_\_\_ DATE \_\_\_\_\_

Section 2. That § 43-4-45 be repealed.

Section 3. That § 36-21A-89.1 be repealed.

An Act to revise the seller's property condition disclosure statement.

=====

I certify that the attached Act  
originated in the

SENATE as Bill No. 83

\_\_\_\_\_  
Secretary of the Senate  
=====

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 83

File No. \_\_\_\_\_

Chapter No. \_\_\_\_\_

=====

Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor  
=====

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor  
=====

STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State